CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00100/2018 Orders pronounced on: 06.09.2018
M.A.No.060/00147/2018 (Orders reserved on: 30.08.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

N.K. Bhalla S/o Late Sh. A.P. Bhalla,

aged 63 years (Senior Citizen),

superannuated from Navodaya Vidyalaya Samiti,

from the post of Deputy Commissioner in September, 2013

and r/o # 345, MDC, Sec. 4,

Panchkula (Haryana) Group-A.

Applicant

By: **SELF**

Versus

1. Union of India through Secretary,
   Ministry of HRD, Govt. of India,
   Shastri Bhawan,
   New Delhi.
2. Executive Committee of the Navodaya Vidyalaya Samiti through Union Minister of HRD, being its Chairman,
   Shastri Bhawan,
   New Delhi.
3. Navodaya Vidyalaya Samiti through its Commissioner, Headquarters, B-15, Institutional Area, Sec. 62, NOIDA, Distt. GB Nagar (UP).

… Respondents

By : **MR. D.R.SHARMA, ADVOCATE**.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the orders dated 22.12.2010 (Annexure A-1), 6.5.2011 (Annexure A-2), 22.3.2011 (Annexure A-3) and 14.10.2009 (Annexure A-8) relatable to grant of benefit of financial up-gradations under MACP Scheme to non-academic (non-teaching) employees of NVS, and claims grant of MACP w.e.f due dates.

2. The facts leading to the filing of the instant Original Application (OA), that applicant joined service as Principal, Group 'A' Ministerial in May, 1989 and was promoted as Assistant Commissioner in June, 2002 and then as Deputy Commissioner in March, 2013. He has retired from service on 30.9.2013. He claims that vide impugned orders, the benefit of MACP has been given to only non-academic employees, which is discriminatory. He claims that as per criteria, he is entitled to 1st MACP of Rs.8700 w.e.f. 1.1.2006 on completion of 10 years of service and 2nd MACP of Rs.8900/- w.e.f. May, 2009. Many representations were filed but to no avail. Hence, this O.A.

3. Along with O.A., the applicant has also filed an M.A. for condonation of delay. He claims that though there is no delay at all, yet as a matter of caution only, he has filed this M.A. The respondents have not properly considered and adopted MACP Scheme for all the officers of the respondent NVS. It is a case of proper pay fixation and thus involves a recurring cause of action. He has consistently pursuing his remedies by filing different O.As in this Tribunal. The issue has now been settled by Hon'ble Supreme Court in C.A. No. 3744/2016 decided on 8.12.2017. Thus, there is no delay and then he also prays for condonation of delay of 414 days in filing the O.A.

4. The respondents have filed a reply explaining that the applicant has not explained each day's delay in filing the O.A. He has not approached this Tribunal with clean hands. The claim is barred by principle of res-judicata. Even in such like cases, where one claims benefit of MACP, the court has rejected the claim being barred by law of limitation.

5. We have heard the learned counsel for the parties at length and examined the material on file.

6. A perusal of the pleadings and documents available on record would show that the applicant had initially filed O.A.No. 060/00422/2014 in this Tribunal challenging the order dated 6.5.2011 and claiming MACP from May, 1989 to 30.9.2013. Notice of motion was issued for 23.7.2014. But since no application for condonation of delay was filed and O.A. was time barred, he withdrew the O.A. with liberty to file a fresh one to challenge the order dated 22.10.2010. So, O.A. was dismissed as withdrawn on 25.11.2014. Then he filed O.A.No. 060/00115/2017 challenging order dated 22.12.2010 and also filed M.A.No. 060/00149/2017 for condonation of delay, by calculating the delay from 10.12.2014 seeking condonation of delay of 414 days. The applicant again withdrew the O.A.No. 060/00149/2017 which was dismissed as such on 24.7.2017 and M.A. too was dismissed having become infructuous. The applicant again filed O.A.No.060/01026/2017 which was dismissed as withdrawn, to file it afresh with better particulars. Now he is before us with the new O.A. and M.A. seeking condonation of delay in filing the O.A.

7. The pleas taken by the applicant would disclose that he has taken contradictory stand. On the one hand he claims that there is no delay in filing the O.A. but he has filed the M.A. as a matter of caution only and

as such delay of 414 days in filing the O.A. may be condoned. One the one hand he claims benefit of ACP/MACP w.e.f. 2006 and 2009 and then he has counted delay of only 414 days. The calculation, done by him, on the face of it is faulty. The cause of action, if any, has to be counted at least from the date of policy decisions, legality of which has been challenged by him in this O.A. He has tried to argue that the O.A. cannot be said to be barred by time in view of decision of Hon'ble Apex Court delivered on 8.12.2017 in C.A. No. 3744 of 2016 – **UNION OF INDIA AND OTHERS VS. BALBIR SINGH TURN & ANOTHER** in which it was held that MACP is part and parcel of pay structure. It is not understood as to how the applicant is relating his claim for grant of MACP to this decision. The only question involved in that case was as to whether the benefit of MACP is applicable from 1.1.2006 or from 1.9.2008. Thus, the cause of action that arose to the applicant from the date when he claims benefit of MACP or from the date of policy decisions adopting the Scheme, cannot be revived in the guise of decision of Hon'ble Apex Court delivered in 2017 in some other case in a totally different context.

8. The applicant himself is a practicing lawyer. He is expected to know that one has to explain each and every day's delay in filing the Original Application. He has been filing cases, one after another and withdrawing it, which can safely be termed to be nothing but misuse of judicial process only.

9. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

> "Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for

> long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

10. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

> "14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."
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> 15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.
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> 16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct

> 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

11. Again in the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

> "A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

12. Again in the case of **BHARAT SANCHAR NIGAM LIMITED VS. GHANSHYAM DASS ETC.** (2011) 4 SCC 374, a three Judge Bench reiterated the principle laid down in the case of **JAGDISH LAL VS. STATE OF HARYANA** (1977) 6 SCC 538, that time barred claim should not be entertained by the Tribunal. Similar view has also been taken in the following decisions:-

(a) AFLATOON & ORS. VS. LT. GOVERNOR, DELHI & OTHERS, AIR 1974 SC 2077
(b) STATE OF MYSORE VS. V.K. KANGAN & OTHERS, AIR 1975 SC 2190
(c) MUNICIPAL COUNCIL, AHMEDNAGAR & ANOTHER V. SHAH HYDER BEIG & OTHERS, AIR 2000 SC 671
(d) INDER JIT GUPTA VS. UNION OF INDIA ETC. (2001) 6 SCC 637
(e) SHIV DASS VS. UNION OF INDIA ETC., AIR 2007 SC 1330
(f) REGIONAL MANAGER, A.P.SRTC VS. N. SATYANARAYANA & OTHERS, (2008) 1 SC 210 and
(g) CITY AND INDUSTRIAL DEVELOPMENT CORPORATION VS. DOSU AARDESHIR BHIWANDIWALA & OTHERS, (2009) 1 SCC 168.

13. Therefore, it is held that since the applicant has miserably failed to plead and prove the ground, much less sufficient and cogent to condone the inordinate delay, and as such M.A. lacks any merit and has to be dismissed.

14. Even on merits, the applicant has basically challenged the policy decision taken by respondents for extension of benefit of MACP Scheme to Non-teaching staff only, which cannot be interferred by this Tribunal.

15. The Hon'ble Supreme Court of India in the case of **UNION OF INDIA AND ANOTHER VS. INTERNATIONAL TRADING CO AND ANOTHER** (2003 (5) SCC 437) has held that the administrative policy, except where the same is inconsistent with the express or implied provisions of a statute, which creates the power to which the policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have been made, cannot be interfered. The relevant observations are reproduced as under :-

> "17. The Courts as observed in G.B. Mahajan v. Jalgaon Municipal Council (AIR 1991 SC 1153) are kept out of lush field of administrative policy except where policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Court's view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.
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> 18. As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6th Edition) there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power. Nor is the test Court's own standard of reasonableness as it might conceive it is a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.
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> 19. In Union of India v. Hindustan Development Corporation (AIR 1994 SC 988), it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by ways of change of old policy, the Courts cannot intervene with the decision. In a given case whether there are such facts and circumstances giving rise to legitimate expectation, would primarily be a question of fact.

> 20. As was observed in Punjab Communications Ltd. v. Union of India and ors. (AIR 1999 SC 1801), the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate extension without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time : present, past and future. How significant is the statement that today is tomorrows' yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.
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> 21. As observed in Attorney General for New Southwale v. Quin (1990(64) Australian LJR 327) `to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law; `If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider, but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognized general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly, when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New Southwale's case the Court should restrain themselves and respect such claims duly to the legal limitations. It is a well-meant caution. Otherwise, a resourceful litigant having vested interest in contract, licences, etc. can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution, particularly in the changing scenario becomes all the more important."

16. It has been held that the State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. Reference is made to **UNION OF INDIA V. ARUN JYOTI KUNDU ETC**. (2007) 7 SCC 472. Thus, we do not find any grounds

made out to interfere in the impugned decisions taken by the respondents.

17. In the light of the aforesaid reasons, the application for condonation of delay is dismissed. Resultantly, the OA, shall also stand dismissed being barred by limitation, as well as on merit also. However, the parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 06.09.2018

HC*